

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.M.A.No.617 of 2011

JUDGMENT:

This appeal is filed by the appellant-Railways aggrieved by the order dated 15-02-2011 in O.A.A.No.300 of 2007 passed by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, wherein the Tribunal granted an amount of Rs.4,00,000/- towards compensation to the respondents-applicants, who are the legal heirs of the deceased.

The facts of the case are that the applicants, who are the wife and three daughters and mother of deceased Chunduri Narayana respectively filed the above OAA under Section 16 of the Railways Claims Tribunal Act read with Section 124-A of the Railways Act, 1989 (for short "the Act") seeking compensation of Rs.4.00 lakhs with interest for his death in an untoward incident. It is stated that on 25-08-2007 about 2 pm, deceased along with his nephew S.Prasad went to Kavali station, purchased a ticket for himself for Ongole, and boarded Train No.7480 Tirupathi-Puri Express. While Train was passing Tettu Station about 3.20 pm, deceased accidentally fell down due to speed and jerks of the train and died subsequently. It is also stated that ticket was lost in the accident.

The same was opposed by the Railways in the written statement stating that no ticket was found and he might have fallen from the unknown train, while travelling from Kavali to Surareddypalem and the body was cut at the waist and crushed. It is stated that deceased has committed suicide and also stated that deceased was not a bonafide passenger, since no ticket was found and it is a case of suicide, no compensation was payable.

Basing on the evidence of AW1 and AW2, Exs.A.1 to A-6 and the evidence of RWs1 and 2 and Exs.R-1 and R-2, the Tribunal granted compensation of Rs.4.00 lakhs along with interest to the applicants.

Heard learned counsel for the appellant and the learned counsel for the respondents.

Learned counsel for the appellant submits that deceased is not a bonafide passenger as no ticket is found on the dead body and it is a case of suicide and since there is no negligence on the part of the Railway administration, it is not liable to pay the compensation.

A perusal of the documents Exs.A-1 to A-4 i.e. F.I.R., Inquest report, PME report and Death Certificate goes to show that deceased died in the accident

occurred on 25-08-2007 and dead body lying on down line near Tettu Station. AW.2 stated that he was nephew of the deceased and he had seen his uncle purchased ticket and boarded the train. RW.2, RPF constable who was with the GRP stated that when they searched the body and no ticket was found. Ex.A.6 final report goes to show that while deceased was traveling in the train fell down from it accidentally and died. The Tribunal held that even though no ticket was found, based on AW.2's evidence held that ticket might have been lost in the accident and that the Railways have not proved that deceased was not a bonafide passenger.

In **N.Buchilingam And Ors. vs Union Of India (Uoi)**^[1] this Court held as under:

“ So far as R.W.2 is concerned, he vouched for noticing and recovering the body of the deceased at 7:30 hours on 14.1.1998. On the basis of his statement as well as the observation in the post-mortem report that the deceased might have died 24 hours prior to the post-mortem examination, the respondent contended that the deceased cannot be said to have died during the course of journey, undertaken on the strength of the tickets referred to above. The question as to at what point of time, the deceased may have died cannot depend on the time, at which the dead body was noticed. It may be true that the dead body was found at a place fairly nearer to the cabin. However, it was not stated that it is such a place, where people were passing frequently. R.W.2, the keyman, deposed that he is in-charge of K.M. Nos. 109 to 111 and that he noticed the dead body at K.M.No. 111/7-8. He stated that it is his duty to patrol the line everyday. An inference was drawn to the effect that had the dead body been there on 12th or atleast on 13th January, 1998, it could certainly have been noticed by R.W.2. This proceeds on the assumption that R.W.2 carried his patrolling duty on 13.1.1998. However, it was elicited through him that on every Tuesday, he is off the duty and that 13.1.1998 was Tuesday. The respondent did not plead that a substitute was posted in place of R.W.2, muchless, such a person was examined. Under these circumstances, it cannot be said that the deceased was not a bona fide passenger. On the other hand, the recovery of the tickets, the validity of which is not even doubted, clearly establishes that he was a bona fide passenger. Mere delay in recovery of a dead body, that too, at a place hundreds of kilo meters away from the place of residence of the deceased, cannot be a factor to doubt the bona fides.

The other issue touches the question is as to whether the death of the deceased occurred on account of accidental fall. The fact that the dead body was noticed and recovered by the Railway Staff near railway track prima facie discloses that the death of the deceased occurred on account of an accident. The nature of incidents that may result in injuries or death of bona fide passengers, involving a train is elaborately dealt with in [Section 123](#) of the Railways Act. The term 'accidental fall' referred to in Clause (c) thereof, does not require that the accident shall be of a

particular nature. Once an individual receives injuries or succumbs to them, the liability of the railways arise. It is saved only under certain circumstances referred under [Section 124-A](#) of the Act. As long as the circumstances stated therein are not pleaded or proved, the liability against the respondent to pay compensation subsists. Being the provisions intended for the welfare of the victims of accident or their dependants, [Sections 123](#) and [124-A](#) need to be given a liberal construction. There are no factors to indicate that there was any attempt on the part of the appellants to present a fictitious claim. The fact that the dead body was found at a place hundreds of kilometers away from their residence, the deceased was seen of by P.W.2 at the Railway Station and that tickets were recovered from his body, clearly disclose that the death occurred only on account of accidental fall from the train. Therefore, the appellants are entitled to be paid the compensation as provided for under the relevant provisions. The compensation provided for such instances under the relevant provisions as they stand now is Rs. 4,00,000/-."

In the Judgment of **Ashrani Das v. Union of India and Another**^[2] the Calcutta High Court held as under:

We are quite conscious of the position of law that as provided in [Section 106](#) of the Evidence Act, if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in illustration (b) of that section, if a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is upon him. But such principle is not applicable to a case of a dead person who was proved to have died in course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the Railway Authority to first give evidence that he was without a valid ticket and if such evidence is given, the onus shifts upon the claimants to prove that he was a bona fide passenger having a valid ticket. In this case, as no person on behalf of the Railway has given any such evidence nor has any person come forward to disclose what articles were found with the victim, we conclude that the initial burden of proving such fact had not been discharged. We cannot lose sight of the fact that one is not entitled to enter even the platform of a railway station without having a valid platform ticket and one takes the risk of criminal prosecution by boarding a train without ticket. In such circumstances, in the absence of any evidence of the Railway Authority asserting absence of a valid ticket, we are of the opinion, there is no just reason for totally discarding the evidence of the PW-2 simply because his statement that when he reached the accident-spot it was afternoon was found to be not possible having regard to the fact that on March 4 of a year the train left Sainthia at 5-20 p.m and after reaching the next station and complaining at the said station about the accident, he could not come back to the accident-spot by availing a bus before the sunset.

In the judgment of **Union of India represented by its General Manager S.C.Railways, Secunderabad v. Borra Vijayalakshmi and others**^[3], this Court held as under:

“ A plain reading of the above provision and a true consideration of the same would show that when any person is a victim of "untoward incident", the railway administration shall be liable to pay compensation. In such an event, the wrongful act/negligent or default on the part of railway administration or any defence available in any other law would not exempt railway administration from paying the compensation. The explanation below [Section 124-A](#) of the Act clarifies that "passenger" is a person who has purchased a valid ticket for travelling by a train carrying passengers, oh any date or a valid platform ticket and becomes a victim of an untoward incident.

The learned Counsel would place considerable stress on the explanation to seek exception from the rigour of law in payment of compensation. To my mind though a person travelling by a train carrying passengers without ticket is not entitled for compensation, the burden to prove that railway administration is exempted from paying compensation for untoward incident on the ground of a person not buying a ticket would heavily lie on the railway administration. There are two reasons for this. First, it is well settled that when a person seeks exemption from any liability, the burden in justification of such exemption would certainly lie on the person seeking such exemption. Secondly, under [Section 137](#) read with [Section 55](#) of the Act, ticketless travel is made a culpable offence attracting imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Needless to point out that unless the statute so requires when an offence is alleged against a person the burden lies on the prosecution to show that such person has violated law by not buying the ticket.

In overruling objection by appellant, learned tribunal correctly drawn an inference that at the time of inquest on the dead body of the deceased the ticket might have been lost and that P.W.2, who is the person accompanied the deceased to the railway station, spoke that he saw Subrahmanyeswara Rao buying the railway ticket. There was no rebuttal of this statement and, therefore, the learned Tribunal observed that it cannot be concluded that a person was traveling without a ticket in a situation as was presented before it. For this reason, the submission of the learned Counsel for the appellant must be held as without merit.”

The Tribunal though not referred to the above judgments, but by following the principles laid down in them came to the conclusion that the Railways failed to establish that deceased is not a bonafide passenger and RW.1 also stated that it may be due to fall from the train and the Tribunal has relied on the evidence of RW.1 (Guard). Thereby, the Tribunal basing on the evidence of RW.1 and AW.2 and Ex.A.6 final report came to the conclusion that deceased travelled in the train and fell from it accidentally and died. The Tribunal also held that it is an untoward accident and deceased is a bonafide passenger and that the Railways failed to establish that deceased is not a bonafide passenger. Even if two views are possible, this Court cannot interfere with the finding of the Tribunal.

In view of above facts and circumstances, I do not see any merit in the

appeal and is liable to be dismissed.

Accordingly, the Appeal is dismissed. As a sequel to the disposal of this Appeal, miscellaneous petitions, if any, pending shall stand closed.

25-01-2016
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A.RAJASHEKER REDDY,J

[\[1\]](#) 2004 (6) ALD Page 302

[\[2\]](#) AIR 2009 Calcutta 205 (DB)

[\[3\]](#) 2005 (2) ALT 86